AMALGAMATED PROPERTIES & INDUSTRIES BHD.

v.

RAJARETNAM PALANIANDY

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[ORIGINATING MOTION NO. A 18 Of 1984]
26 DECEMBER 1984

CIVIL PROCEDURE: *Appeal from order of Pegawai Buruh - Time within which appeal must be brought - Whether irregularity can be cured.*

The applicant company brought this appeal against the order of the Pegawai Buruh, Pelabuhan Kelang purportedly made under s. 69 of the Employment Act. The appeal was made by way of originating motion pursuant to O. 55 r. 13 of the Rules of the High Court 1980 despite the provisions of s. 77 of the Employment Act. The issue is whether the appeal should be filed within 14 days as stated in Subordinate Court Rules 1980 or within one month as stated in O. 55 r. 13 of the Rules of the High Court.

Held:

[1] The provisions of s. 77 of the Employment Act prevail over O. 55 r. 13 of the Rules of the High Court, since the section has been enacted by Parliament and O. 55 r. 13 of the Rules of the High Court was made by the Rules Committee. Therefore the procedure of appeal prescribed in the Subordinate Court Rules 1980 should be followed. Section 77(2) of the Employment Act is subject to any rules made under s. 4 of the Subordinate Court Rules Act, whereby the Subordinate Court Rules 1980 are subject to the Rules of the High Court. But O. 55 r. 13 of the Rules of the High Court should not be adopted in preference to the Subordinate Court Rules 1980 because the Subordinate Court Rules 1980 and O. 55 r. 13 of the Rules of the High Court are two sets of rules separate and distinct from one another and s. 77 of the Employment Act expressly adopts the set of rules applicable to the Sessions Court i.e., the Subordinate Court Rules 1980.

[2] The present originating motion was an irregularity which could be cured provided that there was no contravention of the time limit within which any act was to be done. Under the Subordinate Court Rules 1980 notice of appeal should be filed within 14 days from the date of the decision, but this originating motion was filed 25 days after the date of the decision. In the circumstances the delay was an irregularity which cannot be cured.

[Motion and appeal dismissed. Costs to respondent]

[**Editor's Note:** Appeal against this judgment was heard in the Supreme Court Civil Appeal No. 19 of 1985 on 21 August 1985 and by consent, the appeal was allowed with costs to the respondent. The appellants contended that the learned Judge decided the case on a point that was never raised or argued before him.]

Case referred to:
Yong Yoke Sung & Ors v. Sungei Wang Estate [1966] I MLJ 175

Legislation referred to:
Employment Act 1955, ss. 69, 77, (2)
Rules Committee Ordinance, ss. 4, 4(b)
Rules of the High Court 1980, O. 55 r. 13
Rules of Supreme Court 1957, O. 59, r. 13

For the applicant - M. Nagarajah; *M/s. Shook Lin & Bok*
For the respondent - Karam Singh; *M/s. Karam Singh Veriah & Co.*

JUDGMENT

Wan Hamzah J:

On 9 March 1984 Pegawai Buruh, Pelabohan Kelang issued Form C in which the applicant company was ordered to pay a sum of RM3,904.57 in favour of its employee, the respondent in this case. On that date the Pegawai Buruh made the order purportedly under. s. 69 of the Employment Act. The applicant brought this appeal against that order by way of originating motion despite the provisions in s. 77 of the Act requiring that the procedure in a civil appeal from a Sessions Court should be adopted. Section 77 reads:

> 77.(1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under s. 69 or s. 73 such person may appeal to the High Court.
>
> (2) Subject to any rules made under s. 4 of the Subordinate Court Rules Act 1955, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

The present originating motion was brought purportedly pursuant to O. 55 r. 13 of the Rules of the High Court 1980, which provides that where under any written law an appeal lies from any decision of any person or body of persons to the High Court such appeal shall be made to the High Court by motion setting out the grounds of appeal, supported by affidavit, and such appeal shall be made within one month from the date on which the decision was given. In my opinion the provisions of s. 77 prevail over O. 55 r. 13 of the Rules of the High Court 1980, since the section has been enacted by Parliament and O. 55 r. 13 of the Rules of the High Court 1980 was made by the Rules Committee. Therefore the procedure of appeal prescribed in the Subordinate Court Rules 1980 should be followed.

Sub-section 2 of s. 77 of Employment Act is subject to any rules made under s. 4 of the Subordinate Court Rules Act. It is true that under s. 4 of the Subordinate Court Rules Act the Subordinate Court Rules 1980 are subject to the Rules of the High Court 1980, but I do not think that in this case O. 55 r. 13 of the Rules of the High Court 1980 should be adopted in preference to the Subordinate Court Rules 1980, because the Subordinate Court Rules 1980 and O. 55 r. 13 of the Rules of the High Court 1980 are two sets of rules separate and distinct from one another and s. 77 of the Employment Act expressly adopts the set of rules applicable to the Sessions Court, i.e., the Subordinate Court Rules 1980.

I am aware of the ruling by the Federal Court in the case of *Yong Yoke Sung & Ors. v. Sungei Wang Estate* [1966] 1 MLJ 175 to the effect that an appeal similar to the present one should be brought by way of motion setting out the grounds of appeal supported by affidavit. No one should doubt the correctness of the decision of the Federal Court in that case, but I do not think that ruling which was made in 1965 is applicable to the present day appeals from decisions made under s. 69 of the Employment Act. The decision of the Federal Court in that case was made when the Rule Committee Ordinance 1955 in its old form was in force. At that time the Rules of the Supreme Court 1957 were also in force and had not been replaced by the Rules of the High Court 1980. As pointed out by Pike CJ in that case, s. 77(2) of the Employment Ordinance 1955 at that time should be read as follows:

> Subject to any rules made under s. 4 of the Rule Committee Ordinance 1955, the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

In his judgment Pike CJ stated-

> Section 4 of the Rule Committee Ordinance 1948 has been repealed and replaced by s. 4 of the Rule Committee Ordinance 1955. In each section there was provision for the making of rules for "regulating and prescribing the procedure on appeals from any Court or person(s) to the Court to Appeal or the High Court"...

Pike CJ was referring to s. 4(b) of the Rule Committee Ordinance 1955, the relevant parts of which read as follows.

> 4. It shall be the duty of the Rule Committee from time to time and as occasion may require to make rules for the following purposes-
>
> (a) ...
>
> (b) for regulating and prescribing the procedure in proceedings by way of appeal from any Court or persons to the Court of Appeal or the High Court, the time within which any such appeal may be brought, and

At that time s. 4 of the Rule Committee Ordinance 1955 provided for the function of one and the same Rule Committee for making rules for regulating the procedure and the practice to be followed in the High Court and in Subordinate Courts respectively. It also provided for the function of the same Rule Committee to make rules for prescribing the procedure in proceedings by way of appeal to the High Court not only from the decisions of Subordinate Courts but also from the decisions of persons like the decision of Pegawai Buruh in the present case. Thus the Rules of the Supreme Court 1957 were made by that Rule Committee (established under s. 3) pursuant to the powers conferred by s. 4 of the Rule Committee Ordinance 1955. Therefore the Rules of the Supreme Court 1957 were rules referred to in the opening words of s. 77(2) of the Employment Ordinance, i.e., the words "Subject to any rules made under s. 4 of the Rule Committee Ordinance 1955. I believe that if they were not so, the Federal Court would not have held that Order 59 Rule 13 of the Rules of the Supreme Court 1957 applied in that case. That this was so is shown by the fact that Pike CJ took pains to explain that the reference to s. 4 of the Rule Committee Ordinance 1948 contained in the opening words of s. 77(2) of the Employment Ordinance must be construed as a reference to s. 4 of the Rule Committee Ordinance 1955. Pike CJ also stressed that the opening words of s. 77(2) were not mere surplusage, on the ground that a perfectly sensible meaning could be given to them.

It should be noted that in contrast with the position at the time of the *Yong Yoke Sung's* case, the present s. 77(2) of the Employment Act does not provide that the section itself is subject to any rules made under the Courts of Judicature Act 1964.

However in my opinion the present originating motion was an irregularity which could be cured provided that there was no contravention of the time limit within which any act was to be done. Under the Subordinate Court Rules 1980 notice of appeal should be filed within 14 days from the date of the decision, but this originating motion was filed 25 days after the date of the decision, and in my opinion the delay was an irregularity which cannot be cured.

I dismiss the motion and appeal. Costs to the respondent.

Also found at [1985] 2 CLJ 130